

John Melnik
Name

Address

30576
Prison Number

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

John Melnik
Plaintiff,

vs.

DIRECTOR JAMES DZUBENDA

WARDEN DWIGHT NEVEN

SGT. JAY BARTH

40 JASON SATTERLY

SGT. ANTHONY WARREN

STACEY BARRETT
Defendant(s).

CASE NO. 3:16-cv-00670
(To be set)

CIVIL RIGHTS COMPLAINT
PURSUANT TO
42 U.S.C. § 1983

Jury Trial Demanded

A. JURISDICTION

- 1) This complaint alleges that the civil rights of Plaintiff, John Melnik #30576,
(print Plaintiff's name)

who presently resides at Ely State Prison P.O. Box 1989 Ely, NV 89301 were
(mailing address or place of confinement)

violated by the actions of the below named individuals which were directed against

Plaintiff at High Desert State Prison (HDSF) on the following dates
(institution/city where violation occurred)

12-10-14, _____, and _____
(Count I) (Count II) (Count III)

Make a copy of this page to provide the below
information if you are naming more than five (5) defendants

- 2) Defendant JAMES DZURENDA resides at P.O. Box 7011, Carson City, NV 89701
(full name of first defendant) (address of first defendant)
and is employed as Director of Prisons. This defendant is sued in his/her
(defendant's position and title, if any)

☒ individual ☒ official capacity. (Check one or both). Explain how this defendant was
acting under color of law: AS Director of Prisons By answering Level
Two grievances.

- 3) Defendant DWIGHT NEVEN resides at HIGH DESERT STATE PRISON,
(full name of first defendant) (address of first defendant)
and is employed as WARDEN. This defendant is sued in his/her
(defendant's position and title, if any)

☒ individual ☒ official capacity. (Check one or both). Explain how this defendant was
acting under color of law: By ANSWERING PLAINTIFFS LEVEL ONE
GRIEVANCE.

- 4) Defendant Sgt. Jay Barth resides at HIGH DESERT STATE PRISON
(full name of first defendant) (address of first defendant)
and is employed as Disciplinary Sergeant. This defendant is sued in his/her
(defendant's position and title, if any)

☒ individual ☒ official capacity. (Check one or both). Explain how this defendant was
acting under color of law: By performing his duties as Disciplinary
HEARING OFFICER

- 5) Defendant Sgt. ANTHONY WARREN resides at HIGH DESERT STATE PRISON
(full name of first defendant) (address of first defendant)
and is employed as SENIOR CORRECTIONAL OFFICER. This defendant is sued in his/her
(defendant's position and title, if any)

☒ individual ☒ official capacity. (Check one or both). Explain how this defendant was
acting under color of law: By performing his duties as Preliminary
HEARING OFFICER

Make a copy of this page to provide the below
information if you are naming more than five (5) defendants

5) Defendant Jason Satterly resides at HIGH DESERT STATE PRISON
(full name of first defendant) (address of first defendant)
and is employed as CERT / INVESTIGATOR. This defendant is sued in his/her
(defendant's position and title, if any)
☒ individual ☒ official capacity. (Check one or both). Explain how this defendant was acting
under color of law: By performing his duties as CERT AND
PRISON Investigator

6) Defendant STACEY BARRETT resides at HIGH DESERT STATE PRISON
(full name of first defendant) (address of first defendant)
and is employed as CASEWORKER / GRIEVANCE DESIGNEE. This defendant is sued in his/her
(defendant's position and title, if any)
☒ individual ☒ official capacity. (Check one or both). Explain how this defendant was acting
under color of law: By performing her duties as a CASEWORKER AND
GRIEVANCE COORDINATOR'S designee

~~4) Defendant _____ resides at _____
(full name of first defendant) (address of first defendant)
and is employed as _____. This defendant is sued in his/her
(defendant's position and title, if any)
____ individual ____ official capacity. (Check one or both). Explain how this defendant was acting
under color of law: _____~~

~~5) Defendant _____ resides at _____
(full name of first defendant) (address of first defendant)
and is employed as _____. This defendant is sued in his/her
(defendant's position and title, if any)
____ individual ____ official capacity. (Check one or both). Explain how this defendant was acting
under color of law: _____~~

6) Defendant _____ resides at _____,
(full name of first defendant) (address if first defendant)
and is employed as _____. This defendant is sued in his/her
(defendant's position and title, if any)
_____ individual _____ official capacity. (Check one or both). Explain how this
defendant was acting
under color of law. _____

7) Jurisdiction is invoked pursuant to 28 U.S.C. § 1343 (a)(3) and
42 U.S.C. § 1983. If you wish to assert jurisdiction under different or
additional statutes, list them below.

28 U.S.C. § 242, NRS 41.0322.

B. NATURE OF THE CASE

1) Briefly state the background of your case.

Plaintiff brings this action due to the denial of evidence at
his Disciplinary hearing. Plaintiff requested, both verbally and by
written request (kite), for this evidence. During both the Prelim-
inary and Disciplinary hearings, Plaintiff requested a copy of the
evidence from both Defendants Sgt. Barth and S/O Warren.
Both Defendants told Plaintiff he needed to contact CERT C/O
Sattely, and that they would do likewise.

In the GRIEVANCE process, Plaintiff has received two
different responses in the Informal and Level I. Level II res-
ponse is at the filing of this action 90 days overdue.

C. CAUSE OF ACTION

6) Defendant JASON Satterly resides at HIGH DESERT STATE PRISON,
(full name of first defendant) (address if first defendant)
and is employed as CERT / INVESTIGATOR. This defendant is sued in his/her
(defendant's position and title, if any)
☒ individual ☒ official capacity. (Check one or both). Explain how this defendant was
acting
under color of law: By performing his duties as CERT and
PRISON INVESTIGATOR

7) Jurisdiction is invoked pursuant to 28 U.S.C. § 1343 (a)(3) and 42 U.S.C. § 1983. If you wish to assert jurisdiction under different or additional statutes, list them below.

B. NATURE OF THE CASE

1) Briefly state the background of your case.

In the informal and Level I responses, Defendants
Barrett, and Neven, while admitting the denial of this
evidence, both giving different responses, both misinterpreting
A.R. 707 which governs Disciplinary.

Due to the actions of Defendants, Plaintiff received two
eighteen month Disciplinary Segregation sanctions, which
continues to this day, transferred to Maximum Security and due to
the Disciplinary Plaintiff was given a two year dump at Parole

To date Defendant Dzulanda has not answered Plaintiff's
Level II Grievance. To date inmate is still serving the
Disciplinary "hole" time.

C. CAUSE OF ACTION

C. CAUSE OF ACTION

COUNT I

The following civil right has been violated: 14th Amendment of The United States Constitution which protects Due Process

Supporting Facts: [Include all facts you consider important. State the facts clearly, in your own words, and without citing legal authority or argument. Be sure you describe exactly what each specific defendant (by name) did to violate your rights].

On December 10, 2014 Plaintiff while house at HIGGINS DESERT STATE PRISON (HDSPP), was taken to Administrative Segregation (Ad. Seg), and placed under investigation, due to drugs entering the institution in two (2) envelopes via institutional mail, allegedly addressed to Plaintiff.

On January 29, 2015 Plaintiff was served with two (2) Notice of Charges (NOC's). Plaintiff was charged with MJ 31 "Unauthorized use of equipment and mail" and MJ 53 "Possession / Sale of Intoxicants". These NOC's were read and served by Defendant Senior Correctional Officer (S/O) Anthony Warren, with Defendant Sergeant (Sgt.) Jay Barth in attendance, supervising. After the reading of the NOC's, Plaintiff requested a photo copy of both envelopes, front and back. Both Defendants said they would "see what they could do".

On January 29, 2015, Plaintiff "Kited" Defendant Sgt. Barth requesting a copy of the evidence (envelopes), front and back. Plaintiff never received a reply.

On February 10, 2015, Plaintiff was taken to his Disciplinary Hearing (Disc). Defendant Sgt. Barth was the Hearing Officer. Plaintiff again requested copies of the envelopes, front and

1 back. Plaintiff informed Sgt. Barth that A.R. 707.e.2 states:

2 "In addition to the Notice of Charges,
3 the inmate shall receive copies of any
4 evidentiary documents, which the Hearing
5 Officer considers, except in cases where non-
6 disclosure has been approved under the "Con-
7 fidential Information" provision of this code".

8 As the envelopes were addressed to Plaintiff, and no "Confid-
9 ential Information/Informant" was indicated concerning the
10 envelopes, Defendant Barth directed Plaintiff to contact
11 Defendant Correctional Officer (C/O) Jason Satterly, CERT,
12 Institutional Investigator, so that Plaintiff could use
13 the evidence in an appeal.

14 Plaintiff was found guilty of two counts of MJ 31
15 Unauthorized Use of Equipment or Mail, and sanctioned to
16 two (2) Eighteen months Disciplinary Segregation (Disc.
17 Seg.) sentences.

18 On February 10, 2015, Plaintiff submitted a "Kite" to Def-
19 endant C/O Satterly requesting the evidence that Plaintiff
20 required, i.e. Photocopies of the envelopes, front and back.

21 Sometime in the next few days, Defendant Satterly
22 interviewed Plaintiff, during the interview, Plaintiff requested
23 a copy of the envelopes, front and back. Defendant Satterly
24 informed Plaintiff that he, Satterly, had to ask for app-
25 roval to remove the evidence from the evidence vault.
26 Plaintiff never received a reply.

27 Between the interview with Defendant Satterly and
28 March 19, 2015, Plaintiff asked unit 4A/B caseworker Def-

1 defendant Stacey Barrett, if she could contact Defendant
 2 Satterly on multiple occasions, concerning copies of the
 3 envelopes. Finally on March 19, 2015, Plaintiff again
 4 sent a written request to Defendant Satterly that he
 5 needed copies of the two(2) envelopes.

6 Between March 19, 2015 and March 31, 2015, Plaintiff
 7 again spoke to Defendant Barrett to seek her assistance
 8 in getting copies of the envelopes. On March 31, 2015, Def-
 9 endant Barrett informed Plaintiff that once the evidence
 10 enters the evidence vault that it cannot be removed per
 11 Defendant Satterly. At this time, Plaintiff showed Defend-
 12 and Barrett A.R. 707, e. 2. After reading it, Defendant
 13 Barrett replied she would check into it. The response that
 14 Plaintiff recieved was being informed by Defendant Barr-
 15 ett that Plaintiff would be transferred to Ely State
 16 Prison (E.S.P.).

17 On March 31, 2015, Plaintiff filed an informal grievance
 18 concerning the evidence.

19 On March 12, 2015, Plaintiff filed his disciplinary
 20 appeals, both were denied April 23, 2015.

21 On April 29, 2015, Plaintiff was transferred to E.S.P. and
 22 placed in Disciplinary Segregation.

23 503.14 ~~Amendment~~, Plaintiff recieved the response/denial for
 24 the Informal Grievance, answered by Defendant Barr-
 25 ett. In this response Defendant Barrett says the reason
 26 Plaintiff was denied the requested evidence was based
 27 upon Operational Picecure (O.P.) 414.02, stating: "CERT
 28 will be responsible for evidence preservation and storage."

1 Also, Plaintiff Barrett stated erroneously that A.R. 707.11
 2 states inmates are not entitled to evidence found by NDOC
 3 staff. A.R. 707.e.2 clearly says inmates are (see page
 4 4-A, lines 2-7).

5 May 23, 2016, Plaintiff filed 1st Level Grievance, pointing
 6 out that O.P. 414 has absolutely nothing to do with A.R.
 7 707 which governs the Disciplinary Process, the evidence
 8 used and the evidence to be provided to inmates during the
 9 disciplinary process.

10 August 4, 2016, Plaintiff received response to the 1st level
 11 Grievance, answered by Defendant Dwight Neven, Warden
 12 at High Desert State Prison, the Response/Denial stated the
 13 reason Plaintiff was denied the evidence he requested
 14 was due to the Confidential Informant Clause per A.R.
 15 711.9.

16 On August 4, 2015, Plaintiff filed a Second Level Grievance
 17 showing that the Confidential Informant Clause per A.R.
 18 711.9 did not apply in this case because the envelopes
 19 had been addressed to Plaintiff and the return
 20 address and name of returnee were included in the
 21 NOC's. No Response has been received.

22 In Conclusion, Plaintiff's Due Process was, and con-
 23 tinues to be violated by the N.D.O.C. The NDOC's policy
 24 on disciplinarys are very clear about the evidence
 25 used against inmates are to be provided to them as
 26 long as that evidence does not violate safety and sec-
 27 urity of the institution, or Confidentiality. In this
 28 case, there is no violation, the documents should

1 be provided according to NDOC policy.

2 At each level of the Grievance procedure, the Def-
3 endants have used a different excuse why Plaintiff
4 was denied this evidence, none of them valid.

5 To this date Defendant James Dzurenda, the
6 Director of the N.D.O.C. has not responded to the
7 2nd Level Grievance despite there being a clear
8 Violation of Plaintiffs Due Process in this matter.

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D. PREVIOUS LAWSUITS AND ADMINISTRATIVE RELIEF

- 1) Have you filed other actions in state or federal courts involving the same or similar facts as involved in this action? ☒ Yes ☐ No. If your answer is "Yes", describe each lawsuit. (If more than one, describe the others on an additional page following the below outline).

- a) Defendants: State of Nevada
- b) Name of court and docket number: HC 1510006 7th Judicial
- c) Disposition (for example, was the case dismissed, appealed or is it still pending?):
Dismissed
- d) Issues raised: Petitioner filed Habeas Corpus due to Due Process being violated at Disciplinary Hearing
- e) Approximate date it was filed: 7-7-15
- f) Approximate date of disposition: _____

- 2) Have you filed an action in federal court that was dismissed because it was determined to be frivolous, malicious, or failed to state a claim upon which relief could be granted? ☐ Yes ☒ No. If your answer is "Yes", describe each lawsuit. (If you have had more than three actions dismissed based on the above reasons, describe the others on an additional page following the below outline).

Lawsuit #1 dismissed as frivolous, malicious, or failed to state a claim:

- a) Defendants: N/A
- b) Name of court and case number: N/A
- c) The case was dismissed because it was found to be (check one): ☐ frivolous ☐ malicious or ☐ failed to state a claim upon which relief could be granted.
- d) Issues raised: N/A
- e) Approximate date it was filed: N/A
- f) Approximate date of disposition: N/A

Lawsuit #2 dismissed as frivolous, malicious, or failed to state a claim:

- a) Defendants: N/A

- b) Name of court and case number: N/A
- c) The case was dismissed because it was found to be (check one): frivolous
 malicious or failed to state a claim upon which relief could be granted.
- d) Issues raised: N/A
- e) Approximate date it was filed: N/A
- f) Approximate date of disposition: N/A

Lawsuit #3 dismissed as frivolous, malicious, or failed to state a claim:

- a) Defendants: N/A
- b) Name of court and case number: N/A
- c) The case was dismissed because it was found to be (check one): frivolous
 malicious or failed to state a claim upon which relief could be granted.
- d) Issues raised: N/A
- e) Approximate date it was filed: N/A
- f) Approximate date of disposition: N/A

- 3) Have you attempted to resolve the dispute stated in this action by seeking relief from the proper administrative officials, e.g., have you exhausted available administrative grievance procedures? ☒ Yes No. If your answer is "No", did you not attempt administrative relief because the dispute involved the validity of a: (1) disciplinary hearing; (2) state or federal court decision; (3) state or federal law or regulation; (4) parole board decision; or (5) other

If your answer is "Yes", provide the following information. Grievance Number 2006300217

Date and institution where grievance was filed 3-31-15 High Desert State Prison

Response to grievance: INFORMAL GRIEVANCE - DENIED

1st LEVEL - DENIED. 2ND LEVEL DIRECTOR

JAMES DZURENDA REFUSES TO ANSWER

COUNT II

The following civil right has been violated:

Supporting Facts: [Include all facts you consider important. State the facts clearly, in your own words, and without citing legal authority or argument. Be sure you describe exactly what each specific defendant (by name) did to violate your rights].

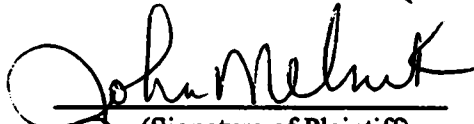
E. REQUEST FOR RELIEF

I believe that I am entitled to the following relief:

COMPENSATORY DAMAGES OF \$100,000.00 FOR THE DUE
PROCESS VIOLATION WITH AN ADDITIONAL \$100.00 A
DAY THAT PLAINTIFF HAS BEEN UNDER DISCIPLINARY
SEGREGATION TIME.

I understand that a false statement or answer to any question in this complaint will subject me to penalties of perjury. I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE UNITED STATES OF AMERICA THAT THE FOREGOING IS TRUE AND CORRECT. See 28 U.S.C. § 1746 and 18 U.S.C. § 1621.

(Name of person who prepared or helped
prepare this complaint if not Plaintiff)


(Signature of Plaintiff)
November 15, 2016
(Date)

(Additional space if needed; identify what is being continued)

CERTIFICATE OF SERVICE By Mailing

I, John Melnik, hereby certify, pursuant to
NRAP 5(b) that on this 15 day of November 2016,
I mailed a true and correct copy of the foregoing
Civil Rights Complaint Pursuant to 42 USC § 1983
by mailing to:

Adam LAXAT
NEVADA ATTORNEY GENERAL
100 N. CARSON St.
CARSON City, NV 89701

Dated 15 day of November 2016

John Melnik
Plaintiff